

Final Order Denying Refund: 04-20182441R
Use Tax
For the Tax Periods July 2015 to September 2017

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Supplier was unable to prove that certain sales to customer were exempt from tax or that Supplier was the proper party to request refund of tax.

ISSUE

I. Use Tax - Imposition.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-4-1; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#); [45 IAC 2.2-3-4](#).

Taxpayer protests the denial of refund of use tax.

STATEMENT OF FACTS

Taxpayer filed a Claim for Refund ("Claim") with the Indiana Department of Revenue ("Department") for "overpayments of out of state use tax" made from tax periods July, 2015 through September, 2017. The Department denied Taxpayer's Claim. Taxpayer filed a timely protest and an administrative hearing was held. This Order results. Additional facts will be provided as necessary.

I. Use Tax - Imposition.

DISCUSSION

Taxpayer filed a Claim requesting refund of use tax remitted to Indiana from July of 2015 to September of 2017. Taxpayer asserts that the refunds pertain to payments of out of state use tax on manufacturing equipment, repair parts, real property improvements, and labor on construction contracts which are exempt from sales and use tax. The Department denied Taxpayer's claim because it "did not include a sufficiently detailed explanation, with supporting evidence." Therefore, "the [D]epartment [could not] determine its correctness." Further, the Department asked that the Taxpayer "explain the manufacturing side of [its] business, as well as provide invoices." Taxpayer protested and provided additional information in support of its claim. This Order addresses that additional information.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); see also *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). Tangible personal property purchased in a retail transaction is subject to use tax when the tangible personal property is "stored, used or otherwise consumed in Indiana . . . unless the Indiana state gross retail tax has been collected at the point of purchase." [45 IAC 2.2-3-4](#). When sales tax is not paid as a part of a retail transaction, use tax will be imposed unless the purchase is eligible for an exemption.

Use of tangible personal property in Indiana could be exempt from Indiana use tax if the sales tax is paid or collected at the time of the purchase pursuant to IC § 6-2.5-3-4 and [45 IAC 2.2-3-4](#). There are also various tax exemptions available outlined in [IC 6-2.5-5](#). A statute which provides a tax exemption, however, is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted). Thus, in applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

Taxpayer is based outside of Indiana. As Taxpayer explained, whenever its related, Indiana-based customer requires an item, Taxpayer purchases the item from third parties and re-sells it to the Indiana-based customer. The customer is the end user and pays Indiana sales tax on those purchases. Taxpayer asserts that it collected sales tax from customer for six categories of transactions which Taxpayer believes were exempt from tax. Therefore, Taxpayer requested a refund of those payments. In support of its claim, Taxpayer provided copies of the invoices it sent to the customer for the transactions in question. The invoices show the amount of sales tax charged in each transaction. Taxpayer also provided an explanation of the six categories of transactions, which included detail as to how the *customer* used the items purchased, and why that use made the item exempt from Indiana sales tax. Taxpayer did not provide proof that the tax was collected from customer, nor did Taxpayer provide proof that the tax was remitted to the Department.

The invoices provided by Taxpayer at the hearing were the same invoices Taxpayer supplied the Department with its original Claim. Though Taxpayer has fleshed out their argument, Taxpayer has not provided any additional documentation, nor does the documentation support Taxpayer's assertions. Further, Taxpayer is not the entity entitled to refund in this scenario. It was Taxpayer's customer, rather, that actually paid the tax, as provided by IC § 6-2.5-2-1(b). Therefore, while customer may be entitled to a refund of the sales tax, Taxpayer is not. Because Taxpayer did not provide sufficient evidence and because Taxpayer is not the party entitled to refund, Taxpayer's protest is denied.

FINDING

Taxpayer is respectfully denied.

June 25, 2019

Posted: 08/28/2019 by Legislative Services Agency
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